

**CITY OF SHOREVIEW  
AGENDA  
CITY COUNCIL WORKSHOP  
APRIL 9, 2012  
7:00 P.M.**

1. ROLL CALL
2. DISCUSSION REGARDING UPDATING TOBACCO REGULATIONS
3. DISCUSSION REGARDING PROPOSED MnPASS PROJECT ON I-35E
4. REVIEW PLANS FOR INTERSECTION IMPROVEMENTS AT COUNTY ROAD F/LEXINGTON AVENUE
5. OTHER ISSUES
6. ADJOURNMENT

**TO: MAYOR AND COUNCILMEMBERS**

**FROM: TESSIA MELVIN**  
**ASSISTANT TO THE CITY MANAGER**

**DATE: APRIL 6, 2012**

**SUBJECT: AMENDING THE TOBACCO PRODUCTS ORDINANCE RELATING TO TOBACCO PRODUCTS**

### **INTRODUCTION**

The City Council and City Manager recently received an email expressing concern about secondhand smoke from a tobacco shop located in the retail center at County Road E and Lexington Avenue, infiltrating adjacent businesses. The complaint noted that the secondhand smoke was irritating to both employees and customers and was having a negative impact on their business. The complainant requested that the Council adopt a regulation that would prohibit the use of tobacco products within all retail buildings. After receiving this complaint, the City Council requested that this matter be scheduled on a workshop agenda for further discussion.

### **BACKGROUND**

The Minnesota Clean Indoor Air Act (MCIAA) currently bans smoking in all indoor areas. The MCIAA does provide an exception and allows for the "sampling of tobacco products" in a tobacco products shop. To receive this exception, a tobacco products shop must have an entrance door that opens directly to the outdoors and the shop must derive more than 90% of its revenue from the sale of tobacco, tobacco products or smoking related accessories. (See attached information sheet for more information). As noted on this fact sheet, local governments do have the authority to adopt more stringent regulations to protect the public from secondhand smoke.

In September of 2010, the City Council approved amendments to the City's tobacco regulations to bring it into compliance with the 2010 Tobacco Modernization and Compliance Act. The primary function of this act was to expand the definition of what is regulated as tobacco in Minnesota. The key changes reflected the following:

- Updates to the definition of tobacco products;
- Prohibiting the sale of unapproved nicotine devices to minors;
- Requires a license for sale of pipes and rolling papers;
- Prohibits selling of all tobacco products in open displays.

The changes in 2010, however, did not address the issue of “tobacco sampling” that is currently an exception to the MCIAA and the focus of the recent complaint. In the past year, several Minnesota cities, including Roseville, White Bear Township, St. Anthony, Golden Valley and St. Cloud, have adopted ordinances to prohibit “tobacco sampling”. In some of these cases, the prohibition was put in place to address the growing popularity of “hookah” bars. Hookah (waterpipe) smoking is a form of tobacco use that is growing in popularity among young adults. There has been a growing number of retail establishments (hookah bars) that rent waterpipes and sell flavored tobacco mixtures. Attached is information from the American Lung Association that provides more background on hookah smoking.

The cities that have chosen to close the “tobacco sampling” exceptions to the MCIAA have generally just added a provision to their ordinance that prohibits the use of tobacco products or tobacco devices in any retail establishment. In researching these ordinances, the staff believes the regulation would go into effect upon publication and establishments would not be “grandfathered” in unless the ordinance specifically includes a grandfather clause.

Staff has discussed this proposed change with Katie Engman from the North Suburban Tobacco Compliance Project (NSTCP). Ms. Engman has indicated her support for this amendment to the City’s tobacco regulations, but also suggested that the City consider updating its entire ordinance to a new model ordinance that was developed in early 2011 to address a number of changes to State and Federal law. Attached is a copy of the model ordinance.

## **DISCUSSION**

Staff is seeking Council feedback on whether they would like to pursue a prohibition regarding tobacco sampling and whether they would like to consider adoption of the updated model tobacco licensing ordinance.

# Freedom to Breathe in Tobacco Products Shops

How the Minnesota Clean Indoor Air Act applies to Tobacco Product Shops

## Background

The Freedom to Breathe (FTB) provisions amended the Minnesota Clean Indoor Air Act (MCIAA) to further protect employees and the public from the health hazards of secondhand smoke. The FTB amendments became effective October 1, 2007.

The MCIAA describes where smoking is prohibited, outlines the responsibilities of employers, managers and other persons in charge and list exemptions that affect their workplaces and facilities. This fact sheet explains how the law applies to tobacco products shops.

## Permitted sampling of tobacco

The MCIAA allows the lighting of tobacco within the indoor area of a tobacco products shop "by a customer or potential customer for the specific purpose of sampling tobacco products."

## Tobacco products shop defined

*All* of the following criteria must be met for a retail establishment to allow lighting of tobacco for sampling purposes.

- The retail establishment must have an entrance door opening directly to the outdoors.
- Greater than 90 percent of the shop's gross revenue must be from the sale of tobacco, tobacco products or smoking related accessories.
- "Tobacco Products Shop" does not mean a tobacco department or section of any individual business establishment with any type of liquor, food or restaurant license.

## Sign posting requirements

If sampling of lighted tobacco products is permitted anywhere within the indoor area of a tobacco products shop, the proprietor or other person in charge must post a sign on or immediately inside of all shop entrances that states: "Smoking is prohibited, except in designated areas." In addition, any locations within a tobacco products shop where sampling is allowed must be designated with signs that state: "Smoking permitted," the international smoking-permitted symbol, or both.

## Definition of "indoor area"

"Indoor Area" means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes [wall space] constituting the perimeter of the area, whether temporary or permanent. A [standard] window screen is not considered a wall.

## Outdoor smoking

The FTB provisions do not prohibit outdoor smoking, regardless of distance from building openings such as doors, windows and ventilation intakes.

## Compliance and enforcement

MDH has compliance authority over the MCIAA and may delegate compliance activities to local units of government. MDH, a local board of health or any affected person can request a court order directing a repeat MCIAA violator to stop.



Minnesota Department of Health  
PO Box 64975  
St Paul, MN 55164-0975  
651-201-4601  
[www.health.state.mn.us](http://www.health.state.mn.us)



## **Freedom to Breathe in Tobacco Products Shops – page 2**

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In addition to the compliance authority provided to MDH, local law enforcement has the authority to issue petty misdemeanor citations to proprietors or individuals who knowingly fail to comply with the MCIAA.

### **Local government ordinances**

Local governments retain the authority to adopt and enforce more stringent measures to protect individuals from secondhand smoke.

### **Retaliation prohibited**

An employer, manager or other person in charge cannot fire, refuse to hire, penalize, discriminate or retaliate against an employee, applicant, or customer who exercises any right to a smoke-free environment provided under the MCIAA.

### **For more information**

Contact the Minnesota Department of Health to receive a copy of the MCIAA, or to receive additional educational materials please visit the MDH website at:

[www.health.state.mn.us/freedomtobreathe](http://www.health.state.mn.us/freedomtobreathe)

### **Minnesota Department of Health**

PO Box 64975

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1-800-798-9050 (toll-free outside the metro)

651-201-5797 (TTY)

Email: [mciaa@health.state.mn.us](mailto:mciaa@health.state.mn.us)



# HOOKAH SMOKING

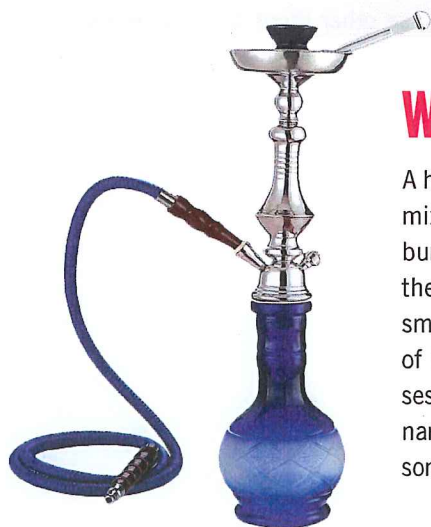
## A Growing Threat to Public Health

Hookah (or waterpipe) smoking is gaining popularity nationwide, especially among urban youth, college students, and young professionals.<sup>1, 2</sup> Despite the growing popularity and increased adoption of state and local smokefree workplace laws, hookah bars remain largely unregulated. In addition, many hookah smokers consider the practice less harmful than smoking cigarettes.<sup>3</sup> This is troubling from a public health perspective since evidence shows that hookah smoking carries many of the same health risks and has been linked to many of the same diseases caused by cigarette smoking.<sup>2</sup> As the American Lung Association and its public health partners continue to move forward to protect workers and patrons from the harmful effects of secondhand smoke, it is vital that we address the health risks hookah use poses to youth and young adults, and close the loopholes in smokefree workplace laws that often exempt hookah bars.

Originating in ancient Persia and India, hookah smoking is a highly social activity during which users smoke tobacco filtered through a waterpipe

that is often shared by the group.<sup>4</sup> Hookah tobacco often contains flavors, including candy and fruit flavors such as orange, white grape or chocolate mint, which help mask the harshness of smoking.<sup>5</sup> Hookah smoking is most common in the United States among young adults ages 18 to 24; however, some studies suggest significant use among middle and high school students.<sup>6</sup> Hookah smoking may serve as a bridge to other forms of tobacco use and is falsely perceived as less harmful than cigarette smoking.<sup>7</sup>

Hookah smoking has increased with the growth of retail establishments that rent waterpipes and sell the flavored tobacco mixtures. Laws and regulations governing the use of hookahs in public places vary from state to state and sometimes from community to community. In many communities, hookah bars and cafes are exempt from smokefree air laws. Given the well-documented dangers of tobacco smoke, stringent policies to limit hookah smoking—especially among youth—are needed to halt this emerging public health threat.



## WHAT IS A HOOKAH AND HOW IS IT USED?

A hookah is a waterpipe used to pass charcoal heated air through a tobacco mixture and ultimately through a water-filled chamber. The charcoal or burning embers are placed on top of a perforated aluminum foil and the tobacco mixture is placed below. The user inhales the water filtered smoke through a tube and mouthpiece. The water lowers the temperature of the smoke. Hookahs are often shared by several users in a smoking session. The tobacco mixtures used in the hookahs are called shisha, boory, narghile, goza, argihileh, or hubble bubble. They vary in composition, with some having flavorings and additives that can reduce the nicotine content.



## PREVALENCE AND RISK FACTORS

### What We Know

Most national and state surveys of tobacco use do not track hookah smoking. As a result, the public health community must rely primarily on research conducted with college students and a limited number of state-based surveys to ascertain the extent of hookah use in the U.S. Despite these limitations, a troubling picture of this trend is emerging. Estimates of hookah use among college students over the past month and lifetime range from 9.5 percent to 20.4 percent and 41 percent to 48 percent, respectively.<sup>5,8</sup> In a sample of users from Memphis, Tennessee and Richmond, Virginia, researchers reported most users were younger than 26 years of age, male, and college graduates or students. Greater frequency of use was found among people who owned a waterpipe, shared hookahs with more than one other person, and were younger when they first used a hookah.<sup>2</sup>

In a recent national survey of 12<sup>th</sup> graders, 17 percent reported smoking a hookah within the past year.<sup>9</sup> A survey of Arizona high school and middle school students found 10.3 percent and 2.1 percent reported having smoked a hookah, respectively.<sup>10</sup> Data from the Florida Youth Tobacco survey indicate that 11 percent of high school students and four percent of middle school students reported using hookahs.<sup>6</sup> Cigarette use and hookah use were found to be associated with each other, but it is unclear whether cigarette smoking leads to hookah smoking, vice versa, or an unknown third factor affects both.<sup>6</sup> Middle school and high school students who viewed cigarettes as helpful in relieving stress and in social situations were more likely to report hookah use.<sup>6</sup> Evidence also suggests 18 to 24 year olds who smoke cigarettes and marijuana, consume alcohol, or use other illicit drugs have higher rates of hookah use.<sup>8</sup>



## FAR FROM SAFE

### Why Hookah Use Needs Greater Attention

#### Hookah use carries many of the same health risks as cigarette smoking.

Hookah smoking appears to be associated with lung cancer, respiratory disease, and low birth weight in babies.<sup>11</sup> Changes measured in the amount of air moved in and out of the lungs when smokers breathe suggest that cigarette smoking and hookah smoking have similar effects on a person's breathing.<sup>12, 13</sup> The combination of charcoal and tobacco is unique to hookah smoking and the charcoal has its own set of health effects in addition to the health effects associated with tobacco use.<sup>14, 12</sup> Additionally, the use of shared mouthpieces during smoking sessions can spread infectious diseases such as tuberculosis, herpes, influenza, and hepatitis.<sup>14</sup>

#### Hookah smokers may be exposed to more nicotine than cigarette smokers.

Many users think hookah smoking is less addictive and exposes them to less nicotine than cigarette smoking.<sup>2, 15</sup> As research on the health effects of waterpipe smoking increases, studies suggest hookah smokers may inhale larger amounts of smoke than cigarette smokers during a single smoking session.<sup>7, 11</sup> Hookah smoking sessions are generally longer (1/2 hour or more) which results in considerably greater nicotine exposure.<sup>16, 5</sup> In one study that pooled results from other similar studies looking at cotinine (a by-product of nicotine in urine and blood), researchers estimated daily waterpipe use to be equivalent to smoking 10 cigarettes a day.<sup>16</sup> When smoking a hookah, very little nicotine is filtered out when the smoke passes through the water in the pipe, with less than a five percent decrease observed.<sup>16</sup>

#### Increased availability and flavored tobacco make hookah use attractive, especially to youth and young adults.

A recent review of the global waterpipe smoking trend suggests hookah use may "represent the second global tobacco epidemic since the cigarette."<sup>7</sup> Hookahs are often smoked in private homes. Becoming increasingly common is patrons renting hookahs and purchasing flavored tobacco in public places such as bars, cafes, and lounges.<sup>5, 2, 6</sup> Two-thirds of states have hookah bars and cafes.<sup>12</sup> Many of these establishments are located near college campuses and students can purchase pipes and accessories online.<sup>5, 2, 6</sup> Additionally, some hookah establishments can cater to youth under the age of 21 as long as alcohol is not served.

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## FAR FROM SAFE

### Why Hookah Use Needs Greater Attention *(continued)*

#### Youth and young adults perceive hookah use as less dangerous than smoking cigarettes.

The increasing popularity of hookah smoking is in part driven by the social context in which use occurs (e.g., among friends in popular social settings), the attractive flavors used in the tobacco mixtures and the perception that it is safer and less irritating than cigarette smoking.<sup>2, 12, 14</sup> *The American Journal of Public Health* recently published findings from the California Tobacco Study that showed a 40 percent increase in hookah smoking among California adults between 2005 and 2008, much of this use in young, college educated adults.<sup>17</sup> Surveys of youth and young adults reveal that this population believes they will experience fewer health effects from hookah smoking than from cigarette smoking.<sup>2, 12</sup> In a survey of attitudes among hookah smokers in Richmond and Memphis the majority of smokers believed that their risk of addiction is less, and reported that they could quit at any time.<sup>2</sup> Most reported that if they switched from cigarettes to hookahs it would reduce their health risks from tobacco.<sup>2</sup> Researchers also report that hookah smoke may be less irritating to smokers, presumably because the smoke is filtered through water before inhalation occurs.<sup>7</sup>

#### Regulatory environment is murky and varies from state to state.

Despite widespread adoption of smokefree workplace legislation in many states and localities, tobacco stores and hookah bars continue to operate. They are often exempted from the requirements that prohibit smoking in public places because they sell tobacco and are classified primarily as tobacco retail establishments. The retail exemption has sometimes been interpreted to mean that patrons can sample the tobacco products they purchase on site.<sup>18</sup> Some establishments qualify for exemptions because they do not serve alcohol on the premises.<sup>18</sup> The definition of smoking can also be an impediment to effective regulation and enforcement, because water pipe smoking is not consistently defined as smoking across jurisdictions.<sup>18, 20</sup>

With the exception of menthol cigarettes, the U.S. Food and Drug Administration (FDA) prohibits the sale of cigarettes with “characterizing flavors” but does not regulate other flavored tobacco products such as those used in waterpipes. The FDA is currently examining options for regulating these products, which, according to a fact sheet posted on FDA’s website, the agency considers unsafe and harmful.<sup>19</sup>



## REGULATING HOOKAH USE

### What Some States and Local Governments Are Doing

In some states, bars and lounges that derive a portion of their income from the sale of non-cigarette tobacco products are exempt from smokefree workplace legislation that prohibits smoking in indoor public places.<sup>20</sup> New Jersey exempts bars and restaurants from their smokefree air ordinance if more than 15 percent of income is from sale of these products and in New York, a similar exemption applies if more than 10 percent of the income is derived from such sales.<sup>18</sup> Michigan's 2010 'Smoke Free Air Law' prohibits hookah smoking unless an exemption as a tobacco specialty store is obtained, and as a tobacco specialty store they can't have any type of liquor, food or restaurant license. North Carolina limits hookah smoking to establishments that do not serve food or alcohol.<sup>21</sup> Boston and Maine have ended their indoor-smoking exemptions that previously allowed customers at hookah bars to smoke indoors.<sup>1</sup>

San Francisco recently applied California's state law prohibiting smoking inside enclosed workplaces to hookah establishments, prohibiting the serving of food or alcohol in those establishments and requiring that they be owner-occupied and located in commercial buildings.<sup>22</sup> This local interpretation was necessary because the California state law does not explicitly reference hookah bars and lounges.<sup>21</sup> Some communities in California seem to be interpreting state law differently, however, with Sacramento permitting indoor hookah smoking in family-owned establishments.<sup>21</sup>



# POLICY RECOMMENDATIONS

A broad range of strategies are needed to reverse the accelerating trend of hookah use in the United States. To accomplish this objective, the American Lung Association recommends the following:

- 1 Close loopholes in state and local laws that exempt hookah bars.** States with smokefree workplace laws often include specific exemptions that enable hookah establishments to continue to allow smoking. In some states and local jurisdictions, hookah bars can qualify as tobacco retail stores, tobacco/cigar bars, private clubs, or owner-operated businesses. Exemptions for hookah bars should be closed in existing laws when possible and not included in new smokefree workplace laws.
- 2 Close loopholes in laws/regulations by clearly defining smoking to include waterpipes.** State laws should clearly include waterpipes in their definitions of smoking. This loophole has been used to exempt hookah bars from laws prohibiting smoking in public places and workplaces in some states.
- 3 FDA should assert authority over tobacco used in hookahs.** The U.S. Food and Drug Administration should assert authority over the manufacturing and marketing of tobacco used in waterpipes, and apply regulations to these products as needed to protect public health.
- 4 Prohibit flavorings in hookah tobacco.** Federal, state or local laws/regulations should be used to eliminate flavorings in hookah tobacco. Flavorings are one of the factors associated with increasing use in youth and young adults. Prohibiting flavors is likely to lessen the appeal of hookah smoking.
- 5 Include questions in national surveys to provide data on hookah use to the public health community.** National surveys such as the Behavioral Risk Factor Surveillance Survey (BRFSS) and the Youth Risk Behavior Survey (YRBS) should include questions about hookah smoking so that better estimates of national incidence and prevalence will be available for policymakers and public health professionals.
- 6 Implement and enforce laws prohibiting the sale of hookah tobacco and its smoking paraphernalia to minors.** The varying definitions of smoking in some jurisdictions allow minors to be admitted to establishments where hookahs are used and/or where paraphernalia is sold. Closing these loopholes will help prevent minors from purchasing hookah tobacco or its paraphernalia.
- 7 Use licensure requirements or zoning rules to regulate hookah establishments.** License and zoning requirements for the sale of tobacco, alcohol or food, hours of operation, age of patrons, and live music or belly dancing can be tools to restrict hookahs bars and lounges. Some jurisdictions prohibit tobacco use and the sale of food and alcohol on the premises. Zoning regulations could prohibit hookah bars and lounges near college campuses.

In addition to the policy recommendations outlined above, alternate measures to discourage hookah use should also be considered. Prohibiting advertising in college newspapers or websites can help to discourage college students from frequenting hookah establishments. Additionally, public awareness campaigns that highlight the health effects of hookahs and counter the myths about reduced harm (compared to cigarette smoking) could help build public support for more effective regulations.

**Conclusions** A comprehensive approach to limiting access to hookah use is critical to averting a potentially deadly trend. Hookah smoking is a growing public health threat that may lead to a resurgence in tobacco use among vulnerable populations. Both the American Lung Association and the World Health Organization recommend that laws or regulations prohibiting cigarette or other tobacco use in public places apply to hookah smoking.<sup>18</sup> Efforts should be made to restrict hookah use, especially among teens and young adults.



## RESOURCES

**American Academy of Pediatrics**  
**Julius P. Richmond Center of Excellence**  
[www.aap.org/richmondcenter/RCEwebinars.html#webinar2](http://www.aap.org/richmondcenter/RCEwebinars.html#webinar2)

**American Cancer Society**  
[www.njgasp.org/ACS\\_Hookah\\_Factsheet.pdf](http://www.njgasp.org/ACS_Hookah_Factsheet.pdf)

**Americans for Nonsmokers' Rights**  
[www.no-smoke.org/goingsmokefree.php?id=581](http://www.no-smoke.org/goingsmokefree.php?id=581)

**American Lung Association State Legislated Actions on Tobacco Issues**  
[www.lungusa2.org/slati/search.php](http://www.lungusa2.org/slati/search.php)

**Tobacco Free U.org (The Bacchus Network)**  
[www.tobaccofreeu.org/pdf/HookahWhitePaper.pdf](http://www.tobaccofreeu.org/pdf/HookahWhitePaper.pdf)

**Tobacco Control Network**  
[www.ttac.org/tcn/peers/other/08.12.10.html](http://www.ttac.org/tcn/peers/other/08.12.10.html)

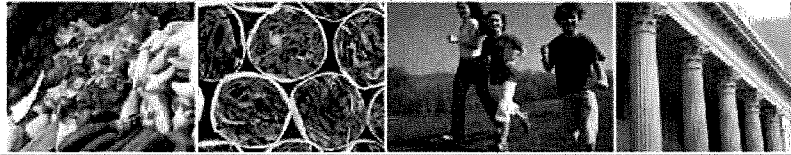
## REFERENCES

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- <sup>2</sup> Ward et al. Characteristics of US water pipe users: A preliminary report. *Nicotine and Tobacco Research*. 2007 December; 9(12):1339-1346.
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- <sup>4</sup> Chaaya M et al. Argileh smoking among university students: A new tobacco epidemic. *Nicotine & Tobacco Research* [serial online]. June 2004;6(3):457-463.
- <sup>5</sup> Harvard Mental Health Letter. The hazards of hookah: Why water pipe smoking raises concerns about addiction and other health problems. *Harvard Health Publications*. 2008 March; 24(9).
- <sup>6</sup> Barnett et al. Waterpipe tobacco smoking among middle and high school students. *Am J Pub Hlth*. 2009; 15:1225.
- <sup>7</sup> Maziak, W. The global epidemic of waterpipe smoking. *Addictive Behavior*. 2011; 36:1-5.
- <sup>8</sup> Dugas et al. Waterpipe smoking among North American youths. *Pediatrics*. 2010. 125(6):1184-1189.
- <sup>9</sup> Johnston, LD et al. Monitoring the future national results on adolescent drug use: Overview of key findings, 2010. Ann Arbor, MI: Institute for Social Research, The University of Michigan, 2011.
- <sup>10</sup> Primack et al. Waterpipe and cigarette smoking among middle and high school students in Arizona. *Pediatrics*. 2009; 123(2):e282-e288.
- <sup>11</sup> Akl et al. The effects of waterpipe tobacco smoking on health outcomes: a systematic review. *Int J Epidemiol*. 2010; 39(3):834-857.
- <sup>12</sup> Chan et al. Up in Smoke: The fallacy of the harmless hookah. *Chest*. 2011; 139:737-738.
- <sup>13</sup> Hakim et al. The acute effects of water-pipe smoking on the cardiorespiratory system. *Chest*. 2011; 139(4):775-781.
- <sup>14</sup> Centers for Disease Control and Prevention. Fact sheet on hookah smoking. [http://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/tobacco\\_industry/hookahs/](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/) Accessed August 20, 2011.
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- <sup>19</sup> Food and Drug Administration. Flavored tobacco product fact sheet. <http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf>. Accessed August 26, 2011.
- <sup>20</sup> Tobacco Control Network. State hookah regulations. October 12, 2010. <http://www.ttac.org/tcn/peers/other/08.12.10.html>.
- <sup>21</sup> News 10. Sacramento hookah lounge owners react to San Francisco ban on indoor smoking. <http://www.news10.net/news/local/story.aspx?storyid=149395>. Accessed August 20, 2011.
- <sup>22</sup> CBS San Francisco. Closer look: San Francisco hookah lounges snuffed out. <http://sanfrancisco.cbslocal.com/2011/08/03/closer-look-san-francisco-hookah-lounges-snuffed-out/> August 3, 2011.

[www.lungusa.org](http://www.lungusa.org)

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## MODEL TOBACCO LICENSING ORDINANCE

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This model ordinance was created in cooperation with the League of Minnesota Cities Codification Service. For more information, visit [www.lmc.org](http://www.lmc.org).

This ordinance contains a number of provisions a city may adopt. A city wishing to adopt this ordinance should review it with the city attorney to determine which provisions are suited to the city's circumstances. A city can modify this ordinance by eliminating provisions that concern activities it does not seek to regulate. Because provisions within this ordinance are controlled by statute, the city attorney should review any modifications to ensure they conform to state law. In addition, the city attorney should review the entire ordinance before it is adopted because it establishes rights and responsibilities of both the city and the license applicants and holders.

This model ordinance is drafted in the form prescribed by Minn. Stat. § 412.191, subd. 4, for statutory cities. Home rule charters often contain provisions concerning how the city may enact ordinances. Home rule charter cities should consult their charter and city attorney to ensure that the city complies with all charter requirements.

This ordinance will affect existing license holders. Therefore, a copy of the proposed ordinance should be mailed to each license holder to inform them of its contents and provide them an opportunity to make their views known.

If your city has codified its ordinances, a copy of any new ordinance must be furnished to the county law library or its designated depository pursuant to Minn. Stat. § 415.021.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REGULATING THE POSSESSION, SALE AND CONSUMPTION OF  
TOBACCO AND TOBACCO RELATED DEVICES AND PRODUCTS WITHIN THE  
CITY OF \_\_\_\_\_, MINNESOTA**

**THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_, MINNESOTA DOES  
ORDAIN:**

Section

- 1 Purpose and intent
- 2 Definitions
- 3 License
- 4 Fees
- 5 Basis for denial of license
- 6 Prohibited sales
- 7 Self-service sales
- 8 Responsibility
- 9 Compliance checks and inspections
- 10 Other illegal acts
- 11 Exceptions and defenses
- 12 Severability
- 13 Violations and penalty
- 14 Effective Date

**SECTION 1. PURPOSE AND INTENT.**

Because the city recognizes that many persons under the age of 18 years purchase or otherwise obtain, possess and use tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices, and the sales, possession, and use are violations of both state and federal laws; and because studies, which the city hereby accepts and adopts, have shown that most smokers begin smoking before they have reached the age of 18 years and that those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; and because smoking has been shown to be the cause of several serious health problems which subsequently place a financial burden on all levels of government; this ordinance shall be intended to regulate the sale, possession and use of tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices for the purpose of enforcing and furthering existing laws, to protect minors against the serious effects associated with the illegal use of tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices, and to further the official public policy of the state in regard to preventing young people from starting to smoke as stated in M.S. § 144.391, as it may be amended from time to time. In making these findings, the City Council accepts the conclusions and recommendations of Center for Disease Control in their study "Selected Cigarette Smoking Initiation and Quitting Behaviors Among High School Students, United States, 1997," and of the following medical professionals in these medical journals: Khuder SA, et

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al., "Age at Smoking Onset and its Effect on Smoking Cessation," *Addictive Behavior* 24(5):673-7, September-October 1999; D'Avanzo B, et al., "Age at Starting Smoking and Number of Cigarettes Smoked," *Annals of Epidemiology* 4(6):455-59, November 1994; Chen, J & Millar, WJ, "Age of Smoking Initiation: Implications for Quitting," *Health Reports* 9(4):39-46, Spring 1998; Everett SA, et al., "Initiation of Cigarette Smoking and Subsequent Smoking Behavior Among U.S. High School Students," *Preventive Medicine*, 29(5):327-33, November 1999, copies of which are adopted by reference.

## **SECTION 2. DEFINITIONS.**

Except as may otherwise be provided or clearly implied by context, all terms shall be given their commonly accepted definitions. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**COMPLIANCE CHECKS.** The system the city uses to investigate and ensure that those authorized to sell tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices are following and complying with the requirements of this ordinance. **COMPLIANCE CHECKS** shall involve the use of minors as authorized by this ordinance. **COMPLIANCE CHECKS** shall also mean the use of minors who attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices for educational, research and training purposes as authorized by state and federal laws. **COMPLIANCE CHECKS** may also be conducted by other units of government for the purpose of enforcing appropriate federal, state or local laws and regulations relating to tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices.

**INDIVIDUALLY PACKAGED.** The practice of selling any tobacco or tobacco product wrapped individually for sale. Individually wrapped tobacco and tobacco products shall include but not be limited to single cigarette packs, single bags or cans of loose tobacco in any form, and single cans or other packaging of snuff or chewing tobacco. Cartons or other packaging containing more than a single pack or other container as described in this definition shall not be considered individually packaged.

**INDOOR AREA.** All space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

**LOOSIES.** The common term used to refer to a single or individually packaged cigarette or any other tobacco product that has been removed from its packaging and sold individually. The term "loosies" does not include individual cigars with a retail price, before any sales taxes, of more than \$2.00 per cigar.

**MINOR.** Any natural person who has not yet reached the age of 18 years.

**MOVEABLE PLACE OF BUSINESS.** Any form of business operated out of a truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

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**NICOTINE OR LOBELIA DELIVERY DEVICES.** Any product containing or delivering nicotine or lobelia intended for human consumption, or any part of such a product, that is not tobacco as defined in this section, not including any product that has been approved or otherwise certified for legal sale by the United States Food and Drug Administration for tobacco use cessation, harm reduction, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

**RETAIL ESTABLISHMENT.** Any place of business where tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices are available for sale to the general public. The phrase shall include but not be limited to grocery stores, convenience stores, restaurants, and drug stores.

**SALE.** Any transfer of goods for money, trade, barter or other consideration.

**SELF-SERVICE MERCHANDISING.** Open displays of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices in any manner where any person shall have access to the tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices, without the assistance or intervention of the licensee or the licensee's employee. The assistance or intervention shall entail the actual physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the customer and the licensee or employee. Self-service sales are interpreted as being any sale where there is not an actual physical exchange of the product between the clerk and the customer.

**SMOKING.** Inhaling or exhaling smoke from any lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product. Smoking also includes carrying a lighted or heated cigar, cigarette, pipe, or any other lighted or heated tobacco or plant product intended for inhalation.

**TOBACCO or TOBACCO PRODUCTS.** Tobacco and tobacco products includes cigarettes and any product containing, made, or derived from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component, part, or accessory of a tobacco product; cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco. Tobacco excludes any tobacco product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.

**TOBACCO-RELATED DEVICES.** Tobacco-related devices includes any tobacco product as well as a pipe, rolling papers, ashtray, or other device intentionally designed or intended to be used in a manner which enables the chewing, sniffing or smoking of tobacco or tobacco products.

**VENDING MACHINE.** Any mechanical, electric or electronic, or other type of device which dispenses tobacco, tobacco products or tobacco-related devices upon the insertion of money, tokens or other form of payment directly into the machine by the person seeking to purchase the tobacco, tobacco product or tobacco-related device.

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### SECTION 3. LICENSE.

(A) *License required.* No person shall sell or offer to sell any tobacco, tobacco products, tobacco-related device, or nicotine or lobelia delivery device without first having obtained a license to do so from the city.

(B) *Application.* An application for a license to sell tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices shall be made on a form provided by the city. The application shall contain the full name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the city deems necessary. Upon receipt of a completed application, the City Clerk shall forward the application to the City Council for action at its next regularly scheduled City Council meeting. If the City Clerk shall determine that an application is incomplete, he or she shall return the application to the applicant with notice of the information necessary to make the application complete.

(C) *Action.* The City Council may either approve or deny the license, or it may delay action for a reasonable period of time as necessary to complete any investigation of the application or the applicant it deems necessary. If the City Council shall approve the license, the City Clerk shall issue the license to the applicant. If the City Council denies the license, notice of the denial shall be given to the applicant along with notice of the applicant's right to appeal the City Council's decision.

(D) *Term.* All licenses issued under this section shall be valid for one calendar year from the date of issue.

(E) *Revocation or suspension.* Any license issued under this section may be revoked or suspended as provided in Section 14.

(F) *Transfers.* All licenses issued under this section shall be valid only on the premises for which the license was issued and only for the person to whom the license was issued. No transfer of any license to another location or person shall be valid without the prior approval of the City Council.

(G) *Moveable place of business.* No license shall be issued to a moveable place of business. Only fixed location businesses shall be eligible to be licensed under this section.

(H) *Display.* All licenses shall be posted and displayed in plain view of the general public on the licensed premise.

(I) *Renewals.* The renewal of a license issued under this section shall be handled in the same manner as the original application. The request for a renewal shall be made at least 30 days but no more than 60 days before the expiration of the current license.

(J) *Issuance as privilege and not a right.* The issuance of a license issued under this section shall be considered a privilege and not an absolute right of the applicant and shall not entitle the holder to an automatic renewal of the license.

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(K) *Proximity to youth-oriented facilities.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices within 1,000 feet of any school, playground, house of worship, or youth-oriented facility, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the school, playground, house of worship, or youth-oriented facility, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year. For the purpose of this section, a youth-oriented facility is defined to include any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are regularly under the age of 21 or which primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21.

(L) *Proximity to other tobacco retailers.* No license shall be granted pursuant to this section to any person for any retail sales of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices within two thousand feet of any other establishment holding such a license, as measured by the shortest line between the space to be occupied by the proposed licensee and the occupied space of the nearest existing licensee, unless that person has been in the business of selling such products in that location before the date this section was enacted into law for at least one year.

(M) *Smoking.* Smoking shall not be permitted and no person shall smoke within the indoor area of any establishment with a retail tobacco license. Smoking for the purposes of sampling tobacco and tobacco related products is prohibited.

Penalty, see Section 14.

#### **SECTION 4. FEES.**

No license shall be issued under this chapter until the appropriate license fee shall be paid in full. The fee for a license under this chapter shall be established in the city's Ordinance Establishing Fees and Charges, as it may be amended from time to time.

Penalty, see Section 14.

#### **SECTION 5. BASIS FOR DENIAL OF LICENSE.**

(A) Grounds for denying the issuance or renewal of a license under this chapter include but are not limited to the following:

(1) The applicant is under the age of 18 years.

(2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices.

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(3) The applicant has had a license to sell tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices revoked within the preceding 12 months of the date of application.

(4) The applicant fails to provide any information required on the application, or provides false or misleading information.

(5) The applicant is prohibited by federal, state, or other local law, ordinance, or other regulation from holding a license.

(B) However, except as may otherwise be provided by law, the existence of any particular ground for denial does not mean that the city must deny the license.

(C) If a license is mistakenly issued or renewed to a person, it shall be revoked upon the discovery that the person was ineligible for the license under this chapter.

Penalty, see Section 14.

## **SECTION 6. PROHIBITED SALES.**

It shall be a violation of this chapter for any person to sell or offer to sell any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device:

(A) To any person under the age of 18 years.

(B) By means of any type of vending machine.

(C) By means of self-service methods whereby the customer does not need to make a verbal or written request to an employee of the licensed premise in order to receive the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee, or the licensee's employee, and the customer.

(D) By means of loosies as defined in Section 2.

(E) Containing opium, morphine, jimson weed, bella donna, strychnos, cocaine, marijuana, or other deleterious, hallucinogenic, toxic or controlled substances except nicotine and other substances found naturally in tobacco or added as part of an otherwise lawful manufacturing process. It is not the intention of this provision to ban the sale of lawfully manufactured cigarettes or other tobacco products.

(F) By any other means, to any other person, in any other manner or form prohibited by federal, state or other local law, ordinance provision, or other regulation.

Penalty, see Section 14.

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## **SECTION 7. SELF-SERVICE SALES.**

It shall be unlawful for a licensee under this chapter to allow the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices by any means where by the customer may have access to those items without having to request the item from the licensee or the licensee's employee and whereby there is not a physical exchange of the tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device between the licensee or his or her clerk and the customer. All tobacco, tobacco products, tobacco-related devices, and nicotine or lobelia delivery devices shall either be stored behind a counter or other area not freely accessible to customers, or in a case or other storage unit not left open and accessible to the general public. Any retailer selling tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices at the time this chapter is adopted shall comply with this section within 90 days following the effective date of this chapter.

Penalty, see Section 14.

## **SECTION 8. RESPONSIBILITY.**

All licensees under this chapter shall be responsible for the actions of their employees in regard to the sale of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices on the licensed premises, and the sale of an item by an employee shall be considered a sale by the license holder. Nothing in this section shall be construed as prohibiting the city from also subjecting the clerk to whatever penalties are appropriate under this chapter, state or federal law, or other applicable law or regulation.

Penalty, see Section 14.

## **SECTION 9. COMPLIANCE CHECKS AND INSPECTIONS.**

All licensed premises shall be open to inspection by the city police or other authorized city official during regular business hours. From time to time, but at least once per year, the city shall conduct compliance checks by engaging, with the written consent of their parents or guardians, minors over the age of 15 years but less than 18 years to enter the licensed premise to attempt to purchase tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices. Minors used for the purpose of compliance checks shall be supervised by city designated law enforcement officers or other designated city personnel. Minors used for compliance checks shall not be guilty of unlawful possession of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices when those items are obtained as a part of the compliance check. No minor used in compliance checks shall attempt to use a false identification misrepresenting the minor's age, and all minors lawfully engaged in a compliance check shall answer all questions about the minor's age asked by the licensee or his or her employee and shall produce any identification, if any exists, for which he or she is asked. Nothing in this section shall prohibit compliance checks authorized by state or federal laws for educational, research, or training purposes, or required for the enforcement of a particular state or federal law.



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Penalty, see Section 14.

## **SECTION 10. OTHER ILLEGAL ACTS.**

Unless otherwise provided, the following acts shall be a violation of this chapter:

(A) *Illegal sales.* It shall be a violation of this chapter for any person to sell or otherwise provide any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device to any minor.

(B) *Illegal possession.* It shall be a violation of this chapter for any minor to have in his or her possession any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This division (B) shall not apply to minors lawfully involved in a compliance check.

(C) *Illegal use.* It shall be a violation of this chapter for any minor to smoke, chew, sniff or otherwise use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device.

(D) *Illegal procurement.* It shall be a violation of this chapter for any minor to purchase or attempt to purchase or otherwise obtain any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device, and it shall be a violation of this chapter for any person to purchase or otherwise obtain those items on behalf of a minor. It shall further be a violation for any person to coerce or attempt to coerce a minor to illegally purchase or otherwise obtain or use any tobacco, tobacco product, tobacco-related device, or nicotine or lobelia delivery device. This division (D) shall not apply to minors lawfully involved in a compliance check.

(E) *Use of false identification.* It shall be a violation of this chapter for any minor to attempt to disguise his or her true age by the use of a false form of identification, whether the identification is that of another person or one on which the age of the person has been modified or tampered with to represent an age older than the actual age of the person.

Penalty, see Section 14.

## **SECTION 11. EXCEPTIONS AND DEFENSES.**

Nothing in this chapter shall prevent the providing of tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices to a minor as part of a lawfully recognized religious, spiritual, or cultural ceremony. It shall be an affirmative defense to the violation of this chapter for a person to have reasonably relied on proof of age as described by state law.

## **SECTION 12. SEVERABILITY.**

If any section or provision of this ordinance is held invalid, such invalidity shall not affect other sections or provisions which can be given force and effect without the invalidated section or provision.

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## SECTION 13. VIOLATIONS AND PENALTY.

(A) *Misdemeanor prosecution.* Nothing in this section shall prohibit the city from seeking prosecution as a misdemeanor for any alleged violation of this ordinance.

(B) *Violations.*

(1) *Notice.* A person violating this chapter may be issued, either personally or by mail, a citation that sets forth the alleged violation and that informs the alleged violator of his or her right to a hearing on the matter. The citation shall provide notice that a hearing must be requested within ten (10) business days of receipt and that hearing rights shall be terminated if a hearing is not promptly requested. The citation shall provide information on how and where a hearing may be requested, including a contact address and phone number.

(2) *Hearings.*

(a) Upon issuance of a citation, a person accused of violating this chapter may request in writing a hearing on the matter. Hearing requests must be made within ten (10) business days of the issuance of the citation and delivered to the city clerk or other designated city officer. Failure to request a hearing within ten (10) business days of the issuance of the citation will terminate the person's right to a hearing.

(b) The city clerk or other designated city officer shall set the time and place for the hearing. Written notice of the hearing time and place shall be mailed or delivered to the accused violator at least ten (10) business days prior to the hearing.

(3) *Hearing Officer.* The city official designated by the City Council shall serve as the hearing officer. The hearing officer must be an impartial employee of the city or an impartial person retained by the city to conduct the hearing.

(4) *Decision.*

(a) A decision shall be issued by the hearing officer within ten (10) business days. If the hearing officer determines that a violation of this chapter did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed under division (B) of this section, shall be recorded in writing, a copy of which shall be provided to the city and the accused violator by in person delivery or mail as soon as practicable. Likewise, if the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings shall be recorded and a copy provided to the city and the acquitted accused violator by in person delivery or mail as soon as practicable.

(b) *Costs.* If the citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of \$1,000.00 shall be paid by the person requesting the hearing.

(c) The decision of the hearing officer is final.

(5) *Appeals.* Appeals of any decision made by the hearing officer shall be filed in the district court for the city in which the alleged violation occurred within ten (10) business days.

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(6) *Continued violation.* Each violation, and every day in which a violation occurs or continues, shall constitute a separate offense.

(C) *Administrative penalties.*

(1) *Licensees.* Any licensee found to have violated this chapter, or whose employee shall have violated this chapter, shall be charged an administrative fine of \$75 for a first violation of this chapter; \$200 for a second offense at the same licensed premises within a 24-month period; and \$250 for a third or subsequent offense at the same location within a 24-month period. In addition, after the third offense, the license shall be suspended for not less than seven consecutive days.

(2) *Other individuals.* Other individuals, other than minors regulated by division (C)(3) of this section, found to be in violation of this chapter shall be charged an administrative fine of \$50.


(3) *Minors.* Minors found in unlawful possession of or who unlawfully purchase or attempt to purchase, tobacco, tobacco products, tobacco-related devices, or nicotine or lobelia delivery devices, shall be subject to an administrative fine, or may be subject to tobacco-related education classes, diversion programs, community services, or another penalty that the city believes will be appropriate and effective. The administrative fine or other penalty shall be established by City Council ordinance upon the City Council's consultation with interested parties of the courts, educators, parents and children to determine an appropriate penalty for minors in the city. This administrative fine or other penalty may also be established from time to time by the Ordinance Establishing Fees and Charges, as it may be amended from time to time.

(4) *Statutory penalties.* If the administrative penalties authorized to be imposed by M.S. § 461.12, as it may be amended from time to time, differ from those established in this section, then the statutory penalties shall prevail.

#### **SECTION 14. EFFECTIVE DATE.**

This ordinance becomes effective on the date of its publication, or upon the publication of a summary of the ordinance as provided by Minn. Stat. § 412.191, subd. 4, as it may be amended from time to time, which meets the requirements of Minn. Stat. § 331A.01, subd. 10, as it may be amended from time to time.

TO: MAYOR, CITY COUNCIL, AND CITY MANAGER

FROM: MARK J. MALONEY, PUBLIC WORKS DIRECTOR 

DATE: APRIL 6, 2012

SUBJ: MnPASS IMPROVEMENT PROJECT ON I-35E  
PENNSYLVANIA AVENUE TO LITTLE CANADA ROAD

As part of the improvement to I-35E at Cayuga Street, the Minnesota Department of Transportation (MnDOT) is proposing to add a MnPASS Express Lane in each direction between Pennsylvania Avenue and Little Canada Road. MnPass is an example of a congestion management strategy currently being implemented in Twin Cities Metro Area; MnDOT and the Metropolitan Council have recommended MnPASS and other managed lane strategies for a number of congested corridors in the area. Please refer to the attached information sheets for details concerning the proposed 2013 MnPASS Improvement in the I-35E Corridor.

While the funding for the project has been identified, Legislation is required to authorize the MnPASS component of the improvement. Accordingly, agencies are being asked to indicate their support for the MnPASS Project in time for consideration during the current legislative session. Attached is a draft of a resolution that could be considered by the City Council at their regular meeting scheduled for April 16, 2012.





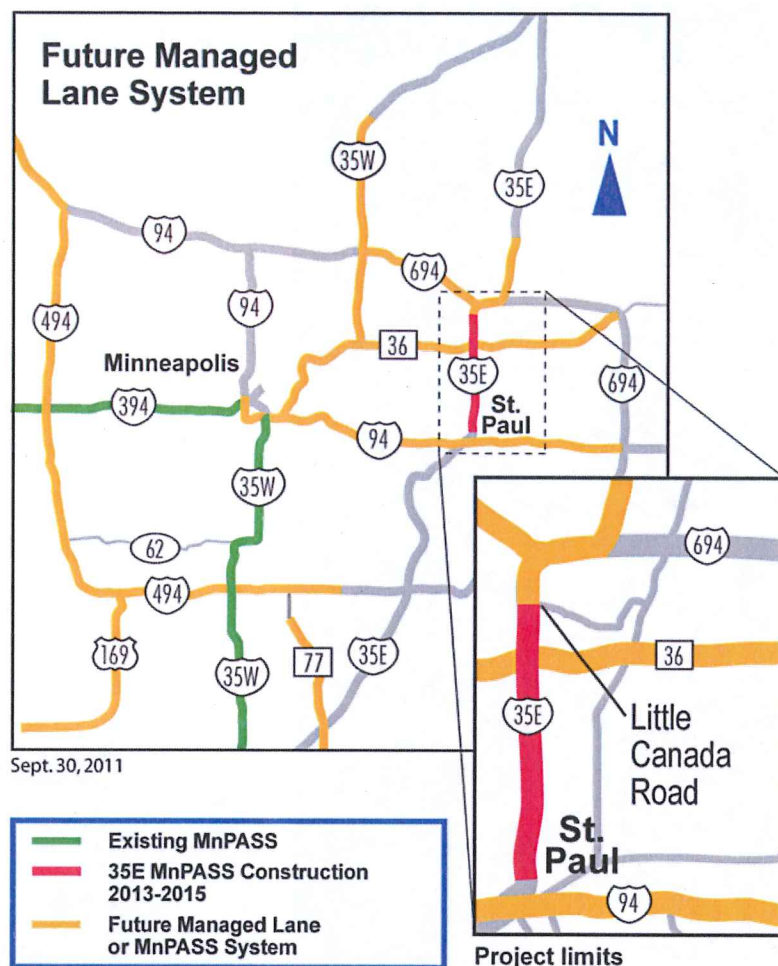
## I-35E MnPASS Project: Pennsylvania Avenue to Little Canada Road

As part of the I-35E Cayuga Project, MnDOT is proposing the addition of a MnPASS Express Lane from between Pennsylvania Avenue and Little Canada Road.

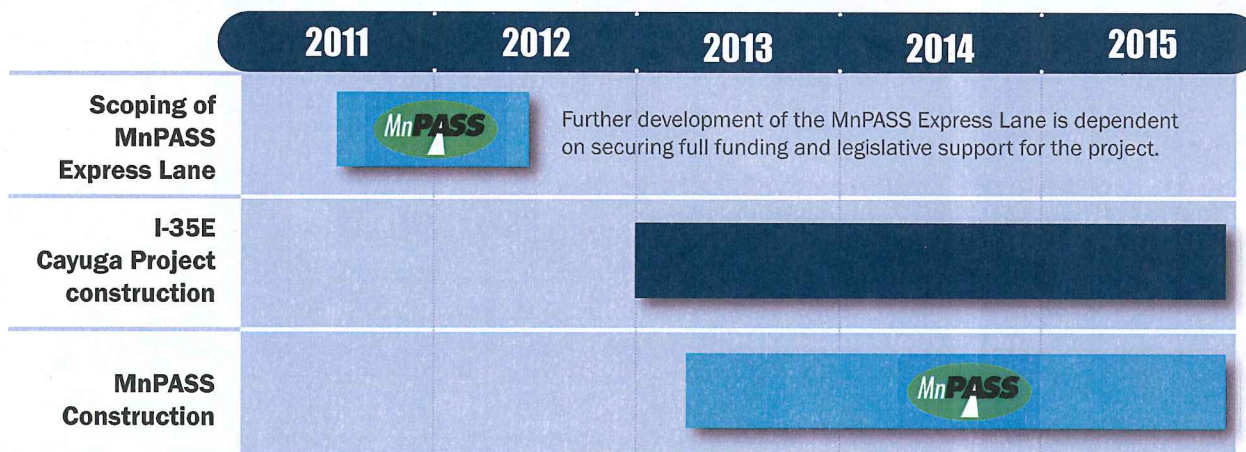
### Project Improvements

The I-35E MnPASS Express Lane construction is part of a larger effort, located on I-35E north of St. Paul. The project improvements include:

- Constructing a new interchange at Cayuga Street, which will help correct current safety issues and provide better freeway access for St. Paul's Phalen Boulevard corridor
- Replacing the Cayuga, Pennsylvania and Maryland Avenue bridges and adjacent railroad bridges
- Constructing an additional lane in each direction for MnPASS between Pennsylvania Avenue and Little Canada Road
- Resurfacing the existing I-35E lanes with concrete through St. Paul, Maplewood and Little Canada
- Replacing the Arlington, Wheelock and Larpenteur bridges over I-35E
- Widening bridges at County Road B, Roselawn Avenue and Highway 36



### Project Schedule



*Your Destination... Our Priority*







## For more information about MnPASS contact:

### Jennie Read

North Area Engineer  
Jennifer.read@state.mn.us  
Phone – 651.234.7713

### Brad Larsen

MnPASS Policy Manager  
651-234-7024  
brad.larsen@state.mn.us

### Brian Kary

Freeway Operations Engineer  
651-234-7022  
Brian.Kary@state.mn.us

[www.mnpass.org](http://www.mnpass.org)

## For more information about the I-35E MnPASS Project, visit us online at:

[www.dot.state.mn.us/cayugamnpass/index.html](http://www.dot.state.mn.us/cayugamnpass/index.html)

## MnPASS Express Lane partners on this project:

- Metropolitan Council
- Metro Transit

## MnPASS Benefits Twin Cities Commuters

Solo drivers who want a more convenient and predictable trip may pay an electronic toll to use the MnPASS Express Lanes during peak travel times. Buses, motorcycles and carpools can use the MnPASS Express Lanes for free during peak travel times. Benefits include:

- Reliable travel times
- Travel options for all commuters
- Reduced congestion
- Improved traffic flow on all highway lanes
- Advantages for transit, with faster, more reliable bus service
- An economical way out of congestion
- An advantage to transit within existing road capacity
- Additional highway capacity when it is needed most, during rush hours
- A system that moves more people at a lower cost than regular lanes
- Revenue to operate, maintain and improve the MnPASS system



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## MnPASS Express Lanes

### *A reliable, cost-effective commuting option*

MnPASS Express Lanes provide commuters more predictable travel times in the Twin Cities Metro area, a region that is experiencing increased traffic congestion. The lanes are free for buses, carpools and motorcycles; people who drive alone can use the lanes by paying an electronic fee. When traffic slows to 50 mph, the fee to enter the MnPASS lanes increases.

MnPASS Express Lanes demonstrate how congestion is reduced in high-demand urban corridors without expanding the highway footprint. In 2005, MnDOT converted underused car pool lanes to optional toll lanes along I-394 between I-494 and downtown Minneapolis. In 2009, MnDOT opened MnPASS Express Lanes on I-35W between Burnsville Parkway and downtown Minneapolis.

#### **MnPASS moves more people**

- MnPASS Express Lanes moves 50 percent more people than regular lanes
- Transit riders are guaranteed faster, congestion-free service because buses can always use the lane. Carpoolers can use the lanes free of charge - any time
- Solo motorists with a MnPASS transponder can choose to use the lanes during rush hours by paying a fee averaging \$1.25
- Transit, carpool and vanpool users outnumber single-occupant vehicle tollpayers by more than 7 to 1 on I-394
- Lanes adjacent to the MnPASS lanes remain general purpose lanes - open and free to all vehicles and less congested because of MnPASS.

#### **Planning for the future**

The next MnPASS lanes are proposed to be built from 2013-15 on I-35E between St. Paul and Little Canada when the I-35E Cayuga Bridge is replaced. These express lanes will be the first MnPASS investment in the East Metro area and an essential link for people commuting between downtown St. Paul and suburbs to the north.

#### **Short-term priority (2013 – 15)**

- Interstate 35E between I-94 in St. Paul and Highway 36 in Little Canada

#### **Mid-term priority (2015 - 30)**

- I-35E between County Road E in Vadnais Heights and Highway 36 in Little Canada
- Highway 36 (eastbound) between I-35W in Minneapolis and I-35E in St. Paul
- I-35W between Highway 36 in Minneapolis and Blaine
- I-94 between St. Paul and Minneapolis

MnDOT and the Metropolitan Council have recommended additional MnPASS lanes for the region in future years because MnPASS is a cost-effective strategy for managing congestion, using existing road capacity to reduce travel times on some of the busiest roads in the metro area.

## September 2011

MnPASS benefits Twin Cities commuters by providing:

- Reliable travel times
- Travel options for all commuters
- Reduced congestion
- Improved traffic flow all highway lanes
- Advantages for transit, with faster, more reliable bus service

MnPASS benefits Minnesota taxpayers by providing:

- An economical way out of congestion
- An advantage to transit within existing road capacity
- Additional highway capacity when it is needed most, during rush hours
- A system that moves more people at a lower cost than regular lanes
- Revenue to operate, maintain and improve the MnPASS system

For more information contact:

Brad Larsen  
MnPASS Policy Manager  
MnDOT Metro District  
651-234-7024  
[brad.larsen@state.mn.us](mailto:brad.larsen@state.mn.us)

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**EXTRACT OF MINUTES OF MEETING OF THE  
CITY COUNCIL OF SHOREVIEW, MINNESOTA  
HELD APRIL 16, 2012**

\* \* \* \* \*

Pursuant to due call and notice thereof, a meeting of the City Council of the City of Shoreview, Minnesota, was duly called and held at the Shoreview City Hall in said City on April 16, 2012, at 7:00 p.m. The following members were present:

and the following members were absent:.

Member            introduced the following resolution and moved its adoption.

RESOLUTION NO. 12-xx

SUPPORTING MNPASS IMPROVEMENT PROJECT ON I-35E  
PENNSYLVANIA AVENUE TO LITTLE CANADA ROAD

WHEREAS, the Minnesota Department of Transportation is proposing to improve Interstate 35E from Pennsylvania Avenue in St. Paul to Little Canada Road; and

WHEREAS, Legislation needs approval during the 2012 State Legislative Session in the form of House File 1588 and Senate File 1072 to proceed with the MnPASS project on I-35E; and

WHEREAS, the Shoreview City Council has received details concerning the project components and proposals and discussed the potential benefits of the proposed MnPASS Improvement on I-35E at their work shop meeting of April 9, 2012.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SHOREVIEW, MINNESOTA THAT the Shoreview City Council is supportive of the establishment of MnPASS lanes on I-35E from Pennsylvania Avenue in St. Paul to Little Canada Road in Little Canada.

The motion for the adoption of the foregoing resolution was duly seconded by Member           , and upon vote being taken thereon, the following voted in favor thereof: ;

and the following voted against the same: .



WHEREUPON, said resolution was declared duly passed and adopted this 16<sup>th</sup> day of April, 2012.

STATE OF MINNESOTA   )  
  )  
COUNTY OF RAMSEY   )  
  )  
CITY OF SHOREVIEW    )


I, the undersigned, being the duly qualified and acting Manager of the City of Shoreview of Ramsey County, Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a meeting of said City Council held on the 16<sup>th</sup> day of April, 2012, with the original thereof on file in my office and the same is a full, true and complete transcript there from insofar as the same relates to the MnPASS Improvement on I-35E.

WITNESS MY HAND officially as such Manager and the corporate seal of the City of Shoreview, Minnesota, this 17<sup>th</sup> day of April 2012.

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Terry Schwerm  
City Manager

TO: MAYOR, CITY COUNCIL, AND CITY MANAGER

FROM: MARK J. MALONEY, PUBLIC WORKS DIRECTOR 

DATE: APRIL 6, 2012

SUBJ: LEXINGTON AVENUE CORRIDOR IMPROVEMENTS, FROM I-694  
TO COUNTY ROAD F

Ramsey County is submitting the proposed improvement of Lexington Avenue, from I-694 to County Road F, for consideration for Transportation and Economic Development (TED) funding. The County is asking for resolutions of support from both Arden Hills and Shoreview, as well as support and possibly donated right of way from area businesses that could benefit from the improvement. Attached is email correspondence from Ramsey County explaining the need for the support and timing of the application for TED funding and a map of the proposed improvements.

With the continued growth in the region, together with the changes in traffic patterns anticipated with the reconfiguration of the Hamline Avenue access to I-694, Lexington Avenue immediately north of the I-694 interchange will see its service level significantly degrade in the foreseeable future. Access to the businesses via Gramsie Road is increasingly problematic, and transportation managers from both the City and Ramsey County expect an increase in crash rates in the corridor. The intersection of Lexington Avenue with County Road F is currently inadequate for peak periods of the day; and it is expected to be worse in the future with the normal background growth in traffic combined with shifts that will occur from the removal of the I-694 off-ramp to northbound Hamline Avenue.

Accordingly, the cities of Arden Hills and Shoreview have been working with MnDOT and Ramsey County for improvements to the area. At this time, the best opportunity available for funding these proposed improvements, with minimal cost participation of the cities, is through TED funds. The proposed Lexington Avenue improvements would include the addition of turn lanes at the Lexington/CR F intersection and pedestrian/ADA improvements in the corridor. It is also being recommended to modify the intersection with Gramsie Road to a right in-right out configuration for both safety and congestion reasons. This would necessitate changes in traffic patterns on Gramsie Road and Chatsworth Street that could be assisted by directional signage. Staff is anticipating engaging the affected business community stakeholders on the topic of the modification of the Gramsie Road access shortly; the strength of the proposal for TED funding is that it simultaneously addresses congestion and safety issues and has the support of the area businesses.

Ramey County has requested City support of their application for TED funding for the proposed Lexington Avenue improvements, which is to be submitted by April 27, 2012. Staff has worked with both MnDOT and Ramsey County on the concept of Lexington Avenue improvements and agrees the proposal would be beneficial to the area. Attached is a draft of a resolution that could be considered by the City Council at their regular meeting scheduled for April 16, 2012.

Mark Maloney &lt;mmaloney@shoreviewmn.gov&gt;

**Lexington Avenue Improvements- I-694 to County Road F**

1 message

**Lux, Joseph** <Joseph.Lux@co.ramsey.mn.us>

Fri, Mar 16, 2012 at 11:21 AM

To: "Hutmacher, Jill" &lt;jill.hutmacher@ci.arden-hills.mn.us&gt;, TOM SIMONSON &lt;TSIMONSON@shoreviewmn.gov&gt;

Cc: Terry Maurer &lt;terry.maurer@ci.arden-hills.mn.us&gt;, MARK MALONEY &lt;mmaloney@shoreviewmn.gov&gt;

Hi, Jill and Tom:

MN/DOT and DEED have announced another solicitation for Transportation and Economic Development (TED) funding for transportation projects. This year's solicitation is less interchange-specific, so we think Lexington Avenue, from just south of I-694 to just north of County Road F, is a good candidate. (We've also submitted it as Surface Transportation Program project and it scored well enough to be funded in a "normal" cycle, but probably not in the current economic climate, unless Congress drastically changes the current transportation bills.)

To summarize what we're proposing, the project would add right-turn lanes at each of the Lexington Avenue ramps to supplement the work MN/DOT is doing there this summer to add dual left-turn lanes. At the Lexington Avenue/County Road F intersection, we'd add dual left-turn lanes for northbound traffic and dedicated left-turn and right-turn lanes for east and westbound traffic. A second southbound left-turn lane could be added, and would improve signal operations a bit, but is optional. Pedestrian facilities would be upgraded to be compliant with ADA requirements and to accommodate the needs of the community. An important component of the proposal, and one that we've discussed with the Shoreview staff, is the proposed prohibition of westbound left turns at Gramsie Street. This would need public involvement, but would represent a significant operational and safety improvement.

One criterion that will affect the scoring of the proposals is how the funds will be leveraged. A greater percentage of local or private funds will help our score. To that end, we plan to allot a significantly higher proportion of CSAH funds to the project than we have in the past. Municipal funding of this project, according to our cost participation policy would be very limited- the only things we've identified so far would be if the cities wanted to add trail or sidewalk- existing sidewalk affected by the project would be replaced at County cost. However, the one area of private investment we want to seek is the donation of right of way. We're working on quantifying how much will be needed for the project, and it is not a large amount, but we would be able to credit the assessed value of the property donated to the project and the donors would be able to write the value off. In the previous TED cycle, Boston Scientific indicated that they would consider this (no commitment, just consideration).

What we'd like from the Cities are the following:

- Any contact you may have at the properties we'd be asking to donate right of way: Bremer Bank, Land O'Lakes, and Boston Scientific in Arden Hills and at the Shoreview Corporate Center, Reiling Properties (Red Robin) and the apartments in Shoreview.
- I've attached a list of the businesses we identified as benefitting from this project. Any additions, corrections, deletions to this list that you're aware of, as well as any contacts at them that you could provide would be helpful.
- City Council resolutions supporting the project, or letters of support, as appropriate, would be helpful.

I've attached a simple layout of the project area for your reference, but it does not show much- please let me know if you have questions, comments, or if we can provide anything. Proposals are due April 27<sup>th</sup>, so we're on kind of a fast track- thanks in advance for your help.

Joe Lux

Joseph Lux

Planning Specialist

Ramsey County Public Works

1425 Paul Kirkwold Drive

Arden Hills, MN 55112-3933

651-266-7114

651-266-7110 (fax)



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**2 attachments**

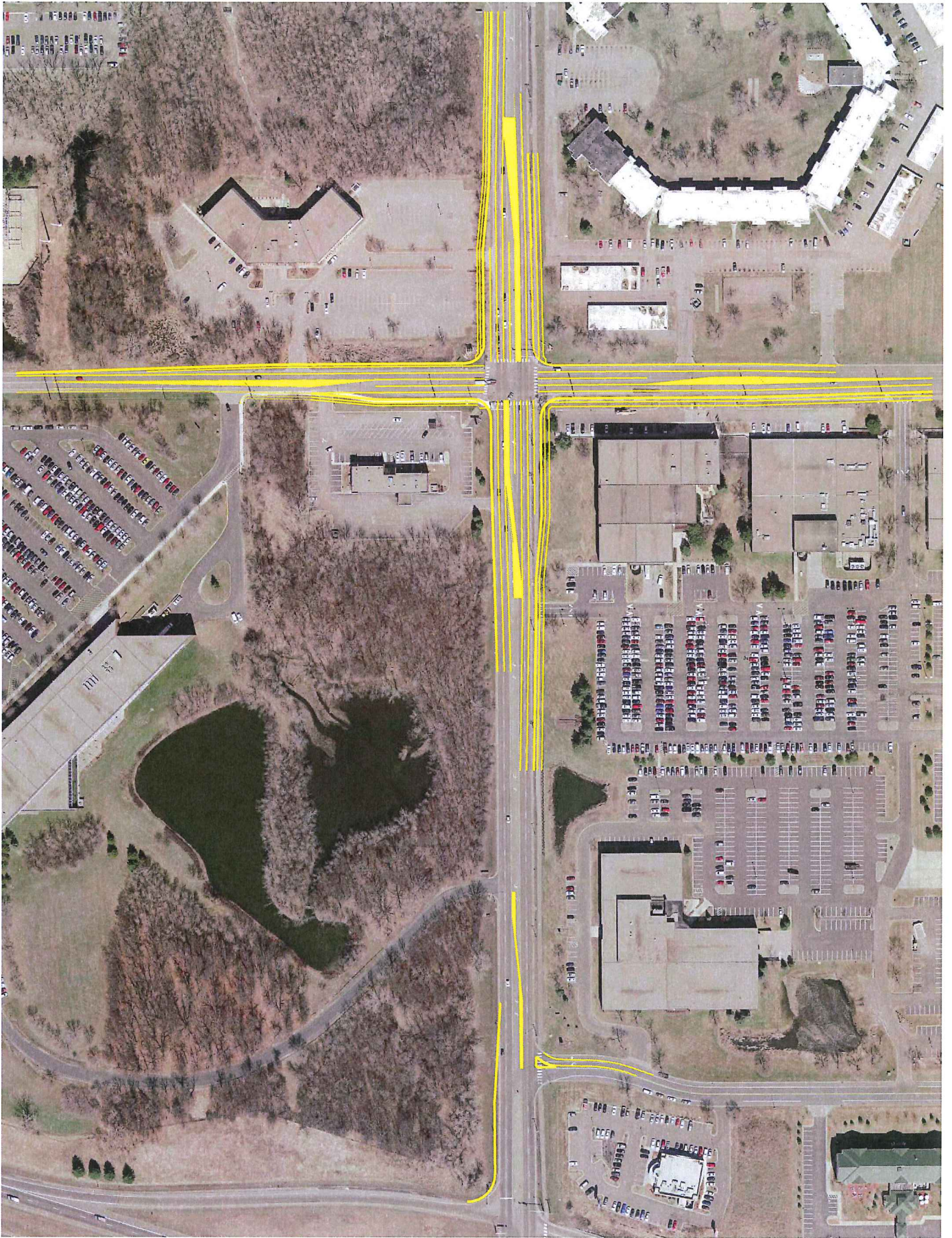


**Major Employers Adjacent to I-694 2-12.docx**  
13K



**Lexington CR F Concept Layout- cropped.pdf**  
457K







**EXTRACT OF MINUTES OF MEETING OF THE  
CITY COUNCIL OF SHOREVIEW, MINNESOTA  
HELD APRIL 16, 2012**

\* \* \* \* \*

Pursuant to due call and notice thereof, a meeting of the City Council of the City of Shoreview, Minnesota, was duly called and held at the Shoreview City Hall in said City on April 16, 2012, at 7:00 p.m. The following members were present:

and the following members were absent:.

Member            introduced the following resolution and moved its adoption.

RESOLUTION NO. 12-xx

SUPPORTING LEXINGTON AVENUE CORRIDOR  
IMPROVEMENTS, FROM I-694 TO COUNTY ROAD F

WHEREAS, Ramsey County is proposing improvements to Lexington Avenue, from I-694 to County Road F in Shoreview; and

WHEREAS, the proposed improvements address growing traffic safety and congestion issues in the Lexington Avenue Corridor; and

WHEREAS, the proposed improvements would be beneficial to both motorized and non-motorized modes of transportation in and around the Corridor, as well as serve the economic development interests of the Community; and

WHEREAS, Ramsey County is submitting a proposal for Transportation and Economic Development funding that seeks to minimize Shoreview financial participation and the Shoreview City Council has discussed and considered these proposed improvements to the Lexington Avenue Corridor.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SHOREVIEW, MINNESOTA THAT the Shoreview City Council is supportive of Ramsey County's proposed improvement of the Lexington Avenue Corridor from I-694 to County Road F.

The motion for the adoption of the foregoing resolution was duly seconded by Member           , and upon vote being taken thereon, the following voted in favor thereof: ;

and the following voted against the same: .

WHEREUPON, said resolution was declared duly passed and adopted this 16<sup>th</sup> day of April, 2012.

STATE OF MINNESOTA   )  
  )  
COUNTY OF RAMSEY   )  
  )  
CITY OF SHOREVIEW    )

I, the undersigned, being the duly qualified and acting Manager of the City of Shoreview of Ramsey County, Minnesota, do hereby certify that I have carefully compared the attached and foregoing extract of minutes of a meeting of said City Council held on the 16<sup>th</sup> day of April, 2012, with the original thereof on file in my office and the same is a full, true and complete transcript there from insofar as the same relates to the proposed improvement of Lexington Avenue.

WITNESS MY HAND officially as such Manager and the corporate seal of the City of Shoreview, Minnesota, this 17<sup>th</sup> day of April 2012.

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Terry Schwerm  
City Manager